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SUPREME COURT OF THE UNITED STATES.

No. 121.

WILLIAM H. ASPINWALL, JOSEPH W. ALSOP, HENRY CHAUNCEY, CHARLES GOULD, AND SAMUEL L. M. BARBOUR, PL'FFS,

vs.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF DAVIESS.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF INDIANA.

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Pleas of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in the said district of Indiana, on the twenty-seventh (27th) day of November, in the year of our Lord one thousand eight hundred and fifty-seven, that being the tenth judicial day of November term of said court, before the Hon. Elisha M. Huntington, judge of said district of Indiana.

WILLIAM H. ASPINWALL, JOSEPH W. ALSOP, Henry Chauncey, Charles Gould, and Samuel L. M. Barbour, vs. THE BOARD OF COMMISSIONERS OF THE COUNTY OF DAVIESS.	Assumpsit. Damages, $5,000 00.

Be it remembered, that on this day the following order was entered in the above-entitled case:

On motion of Mr. Judah, for the plaintiffs, it appearing to the satisfaction of the court, that at the last term of this court, and on the 8th day of June last, this case was submitted to this court, on the declaration and demurrer thereto, and joinder, and that the judges of this court were opposed in opinion on certain questions arising in said case, and that thereupon their certificate of such division of opinion was prepared and signed by them, and ordered to be certified to the Supreme Court of the United States accordingly; but that, by accident, the clerk omitted to enter said certificate in the order book of this court: therefore, it is now ordered that the submission of said case to the said court, as of the 8th day of June last, be now entered on the said order book, and that the said certificate of the said judges be also now so entered on the said order book, in the words and figures following, to wit:

WILLIAM H. ASPINWALL et al.
vs.
THE BOARD OF COMMISSIONERS OF DAVIESS CO.

Be it remembered, that this cause was submitted to the court on the following declaration and demurer, to wit:

CIRCUIT COURT U. S., 7TH CIRCUIT,
Indiana District.

INDIANA, *ss:*

William H. Aspinwall, Joseph W. Alsop, Henry Chauncey,

Charles Gould, and Samuel L. M. Barbour, citizens of the State of New York, and plaintiffs, complain of the board of commissioners of the county of Daviess, a corporation created by the State of Indiana, and having its place of business in the said State, a citizen of the State of Indiana, and defendant, and say, that, by virtue of the act to incorporate the Ohio and Mississippi Railroad Company, approved Feb. 14, 1848, and of the act entitled, an act to amend an act to incorporate the Ohio and Mississippi Railroad Company, approved January 15, 1849, both of the General Assembly of the State of Indiana; and on the 1st Monday of March, 1849, an election was held in the county of Daviess, to determine whether the said county should subscribe for the stock of the said company; and that, at said election a majority of the votes was given in favor of subscriptions, whereby it became the duty of the board of commissioners to subscribe for thirty thousand dollars of the said stock, and whereby, also, it became and was the right and privilege of said company to receive the said stock subscriptions. That, in pursuance of the premises and in conformity with the said acts, afterwards, to wit, on the tenth day of September, in the year eighteen hundred and fifty-two, at the district aforesaid, the defendants subscribed for six hundred shares of the capital stock of the Ohio and Mississippi Railroad Company, of the value of fifty dollars, in the whole thirty thousand dollars, and afterwards, to wit, on the day and year aforesaid, at the district aforesaid, in payment for the said stock so subscribed, the defendant caused to be issued thirty obligations, each sealed with their seal, dated the first day of March, eighteen hundred and fifty-three, subscribed by William McCormack, then the president of said board, and attested by Mathew L. Brett, then the auditor of Daviess county, for the sum of one thousand dollars, numbered severally from one to thirty, both inclusive, and delivered the same to the president and directors of Ohio and Mississippi Railroad Company, a corporation created by the laws of the States of Indiana and Ohio, having its principal place of business at Cincinnati, in the State of Ohio, and a citizen of the State of Ohio, and that, by the terms of the said obligations, each was payable at the North River Bank, in the city of New York, twenty-five years from the date thereof, to the Ohio and Mississippi Railroad Company, or bearer, on the presentation and delivery of said obligation, with interest, at the rate of six per cent. per annum, payable annually, on the first day of March, at said bank, in the city of New York, upon the presentations and delivery of the proper coupons attached, signed by the auditor of said county; and the plaintiffs say that they are the owners and bearers of sixty of the said coupons, each for the sum of sixty dollars, and together of the value of thirty-six hundred dollars; that thirty of said coupons are numbered from one to thirty, both inclusive, and payable on the first day of March, eighteen hundred and fifty-six, and that the other thirty coupons are also numbered from one to thirty, both in-

clusive, and payable on the first day of March, eighteen hundred and fifty-seven; that by each of the said coupons the defendant, by the name of the county of Daviess, promised to pay to the bearer sixty dollars, at the North River Bank, as aforesaid, and that each of them is signed by Mathew L. Brett, who was then the auditor of said county, and refers by its number to the obligations of the same number above described, to which it was originally attached.

And the plaintiffs say that the defendants have wholly neglected and refused to pay the money in the said several coupons promised to be paid, or any part part thereof, according to the tenor thereof, and yet so neglect and refuse, although often requested so to do; to the plaintiffs damage five thousand dollars.

Wherefore they sue, &c.

SAMUEL JUDAH,
JOHN COBURN,
Pl'ffs Att'ys.

And thereupon the defendants file the following demurrer, to wit:

BOARD OF COMMISSIONERS OF DAVIESS CO.,
advs.
WILLIAM H. ASPINWALL et al.

The said def'ts come and defend the wrong and injury, when, &c., and say that the said declaration and the matters therein set forth are not sufficient in law for the plaintiffs to have and maintain their action aforesaid against the defendants.

Wherefore they pray judgment, &c.

McDONALD & PORTER,
Def'ts Att'y.

And the plaintiffs say that the said declaration is sufficient.

JUDAH & COBURN,
For Pl'tffs

And that thereupon the opinions of the judges were opposed, on the following questions:

1. Whether, by the said act of incorporation of the said railroad company, and the amendment thereto of January 15, 1849, any such right to county subscriptions vested in said company as would exclude the operation of the new constitution of Indiana, which took effect on the 1st day of November, 1851.

2. Whether, by virtue of the said acts, and of the said election in the declaration set forth, the Ohio and Mississippi Railroad Co. acquired any such right to the subscription of the defendants as would be protected by the Constitution of the United States against the new constitution of Indiana, which took effect on the 1st day of November, 1851.

And by reason of said opposition of opininon on said questions, it is, on motion of Mr. Judah, for the plaintiffs, ordered that the said declaration, demurrer, and joinder, and the said questions be certified under the seal of this court to the Supreme Court of the United States, for the opinion and determination of the judges of said Court thereon, according to the statute in such case made and provided.

JOHN McLEAN, [SEAL.]
E. M. HUNTINGTON, [SEAL.]

I, Horace Bassett, clerk of the United States circuit court for the seventh judicial circuit and district of Indiana, do hereby certify the above and foregoing to be a true copy from the records now in my office.

In testimony whereof, I have hereto set my hand and affixed the [L. S.] seal of said court, on this 16th day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

H. BASSETT,
Clerk U. S. C. Court, Ind. Dist.

IN THE SUPREME COURT U. S.

WM. H. ASPINWALL and others
vs.
THE BOARD OF COMMMISSIONERS OF THE COUNTY OF DAVIESS.

On certificate of division of opinion by the circuit court of the U. S., for the district of Indiana.

I hereby acknowledge myself security for the costs in this cause. Dec'r 16, 1857.

SAM'L JUDAH.

I, Horace Bassett, clerk of the circuit court of the U. S. for the Indiana district, hereby certify that Samuel Judah, the above obligor, is sufficient security for the costs in the above-entitled case. Dec'r 16, 1857.

H. BASSETT,
Clerk U. S. C. Court, Ind. Dist.